

HOUSE BILL No. 1386

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-1-2; IC 35-50-2-11.

Synopsis: Enhanced penalties for certain offenses. Provides that a person convicted of an offense involving the use of a firearm or destructive device shall receive an additional term of imprisonment.

Effective: July 1, 2004.

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January 20, 2004, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1386

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-50-1-2, AS AMENDED BY P.L.266-2003,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 2. (a) As used in this section, "crime of violence"
4 means:
5 (1) murder (IC 35-42-1-1);
6 (2) attempted murder (IC 35-41-5-1);
7 (3) voluntary manslaughter (IC 35-42-1-3);
8 (4) involuntary manslaughter (IC 35-42-1-4);
9 (5) reckless homicide (IC 35-42-1-5);
10 (6) aggravated battery (IC 35-42-2-1.5);
11 (7) kidnapping (IC 35-42-3-2);
12 (8) rape (IC 35-42-4-1);
13 (9) criminal deviate conduct (IC 35-42-4-2);
14 (10) child molesting (IC 35-42-4-3);
15 (11) sexual misconduct with a minor as a Class A felony under
16 IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2);
17 (12) robbery as a Class A felony or a Class B felony



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(IC 35-42-5-1);

(13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or

(14) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c) in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If a court determines under IC 35-50-2-11 that a person used a firearm **or destructive device** in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 2. IC 35-50-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) **As used in this section, "destructive device" has the meaning set forth in IC 35-41-1-8.5.**

(b) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

~~(b)~~ (c) As used in this section, "offense" means:

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- (1) a felony under IC 35-42 that resulted in death or serious bodily injury;
- (2) kidnapping; or
- (3) criminal confinement as a Class B felony.

~~(c)~~ **(d)** The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm **or destructive device** in the commission of the offense.

~~(d)~~ **(e)** If a person for whom the state seeks an additional term of imprisonment under subsection (c) is convicted of the underlying offense in a jury trial, the jury shall reconvene to determine whether the person knowingly or intentionally used a firearm or destructive device in the commission of the offense. If the trial is to the court or the judgment is entered on a guilty plea, the court alone shall make the determination. However, the jury or the court does not need to reconvene to determine whether the person knowingly or intentionally used a firearm or destructive device if the use of a firearm or destructive device was proven beyond a reasonable doubt as an element of the underlying offense.

~~(f)~~ If after a sentencing hearing a court finds that the jury (in a case tried by a jury) or the court (in a case tried by a court or in which judgment is entered on a guilty plea) determines beyond a reasonable doubt that a person who committed an offense used a firearm **or destructive device** in the commission of the offense, the court ~~may~~ **shall** sentence the person to an additional fixed term of imprisonment of five ~~(5)~~ years: as follows:

- (1) Five (5) years if the person has no prior unrelated felony convictions.
- (2) Ten (10) years if the person has one (1) prior unrelated felony conviction.
- (3) Twenty (20) years if the person has two (2) prior unrelated felony convictions.
- (4) Life imprisonment without parole if the person has three (3) prior unrelated felony convictions.

(g) For purposes of this section, a person accumulates prior unrelated felony convictions in the following manner:

- (1) To constitute a third prior unrelated felony conviction, a conviction must be a conviction of an offense committed after sentencing for the second prior unrelated felony conviction.
- (2) To constitute a second prior unrelated felony conviction,

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1 a conviction must be a conviction of an offense committed
2 after sentencing for the first prior unrelated felony conviction.

3 (h) Notwithstanding IC 11-10-11.5, a person sentenced to an
4 additional fixed term under subsection (f)(1), (f)(2), or (f)(3) is not
5 eligible for assignment to a community transition program.

6 SECTION 3. [EFFECTIVE JULY 1, 2004] IC 35-50-2-11, as
7 amended by this act, applies to offenses committed after June 30,
8 2004.

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